

**CALENDAR ITEM
C23**

A 2, 5
S 4, 6

03/29/12
WP 5110.1
V. Caldwell

GENERAL LEASE – COMMERCIAL USE

APPLICANT/SUBLESSOR:

Hugh Turner

SUBLESSEE:

Alamar Restaurant & Marina LLC
5999 Garden Highway
Sacramento, California 95837

AREA, LAND TYPE, AND LOCATION:

1.604 acres, more or less, of sovereign land in the Sacramento River, adjacent to 5999 Garden Highway, near the city of Sacramento, Sacramento County.

AUTHORIZED USE:

LEASE: Continued use, maintenance, and operation of an existing commercial marina known as Alamar Restaurant & Marina, consisting of 25 covered berths, two side tie docks, fuel dock, restaurant/bar, office area, storage room, and gangway previously authorized by the Commission, and use and maintenance of an existing elevator not previously authorized by the Commission.

SUBLEASE: Operation and maintenance of a restaurant and a commercial marina.

LEASE TERM:

20 years, beginning August 1, 2012.

CONSIDERATION:

Minimum annual rent in the amount of \$5,426 per year, against six percent of the gross annual income derived from the commercial activities from the berthing, docking, and mooring of boats; one and one-half percent of gross income from the restaurant and bar operations; and \$0.015 per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and \$0.02 per

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gallon thereafter, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance of no less than \$2,000,000

Surety:

Surety bond or other security in the amount of \$10,000.

Other:

The lease contains provisions that: The Lessee must implement the Commission's "Best Management Practices for Marina Owners/Operators" and encourage implementation of the Commission's "Best Management Practices for Berth Holders and Boaters", including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories. The Lessee shall provide the Commission, on the first anniversary of the lease and on every third anniversary thereafter, a report on compliance with all BMPs.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On April 27, 1982, the Commission authorized a General Lease – Commercial Use to Hugh Turner and Carol A. Turner. On March 25, 2008, the Commission authorized an assignment of the lease to Hugh Turner and approved Alamar Restaurant & Marina LLC (Alamar) as the operator/sublessee of the marina. The lease expired on December 31, 2011. The Applicant is applying for a new General Lease – Commercial Use.
3. Pursuant to the Applicant's request, staff is recommending that the new lease begin August 1, 2012 rather than January 1, 2012. This change in annual effective date will allow the Applicant to pay the required minimum annual rent and percentage of gross income during the summer months when the Applicant has a greater revenue stream. The minimum annual rent has been paid through December 31, 2012.
4. The Applicant has delegated the operation of the marina through a lease to Alamar and has applied for approval of a sublease for the day-to-day operation of the restaurant and marina. Staff has reviewed the operating agreement and recommends approval of a sublease.
5. In 2009, the Applicant was sued under The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12181), which prohibits

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discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established

The marina did not have wheelchair access from the gangway to the restaurant facility. The Applicant negotiated a settlement by installing a Genesis hydroelectric powered wheelchair lift (elevator). The elevator was installed without prior Commission authorization. Staff recommends approval of the existing elevator within the lease premises.

6. The marina is vulnerable to theft and property destruction and has experienced vandalism, accidents, fires, and other on-the-water problems, requiring immediate action for the overall safety and security of the facility and the public. These factors support a limited and controlled presence of navigable vessels occupied on a 24-hour basis for security purposes. No more than two vessels used for security purposes are recommended and will be located in strategically designated slips subject to the approval of Commission staff. These security vessels will be required to leave the marina waters at least once for a minimum of six hours in each 90-day period and the Lessee is required to submit an annual log to the staff of the Commission. In addition, the Lessee has agreed to additional lease provisions for the implementation of Best Management Practices on the Lease Premises.
7. **Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

8. **Sublease:** The staff recommends that the Commission find that the subject sublease does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

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Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Lease: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Sublease: Find that the subject sublease is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Commercial Use to Hugh Turner, beginning August 1, 2012, for a term of 20 years, for the continued use, maintenance, and operation of an existing commercial marina, known as Alamar Marina, consisting of 25 covered berths, two side tie docks, fuel dock, restaurant/bar, office area, storage room, and gangway previously authorized by the Commission; and use and maintenance of an existing elevator not previously authorized by the Commission, as described on Exhibit A and as shown on Exhibit B (for reference purposes only)

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attached and by this reference made a part hereof; minimum annual rent in the amount of \$5,426 per year, against six percent of the gross annual income derived from the commercial activities from the berthing, docking, and mooring of boats; one and one-half percent of gross income from the restaurant and bar operations; and one and \$.015 per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and \$0.02 per gallon thereafter, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; liability insurance in the amount of no less than \$2,000,000; and surety in the amount of \$10,000.

2. Approve by endorsement of a sublease from Hugh Turner to Alamar Restaurant & Marina, LLC, for a term of 20 years, effective August 1, 2012.

Exhibit "A"

Land Description

PRC 5110.1

A parcel of tide and submerged lands situated in Section 35, T10N, R3E, MDM, Sacramento County, California, more particularly described as follows:

COMMENCING at the most easterly corner of that certain parcel of land as described in that certain deed to Herold R. Beem recorded in Volume 8009, at Page 154, of Sacramento County Records; thence N 40° 50' W 400 feet along the northeasterly line of said parcel to the most northerly corner thereof; thence S 63° 40' W 220 feet to the POINT OF BEGINNING; thence continuing S 63° 40' W 155 feet; thence S 37° 30' 06" E 424.88 feet to a point on the southwesterly extension of the northwesterly line of that certain parcel of land as described in that certain lease No. PRC 4812.1 on file in the Office of the California State Lands Commission, Sacramento; thence N 49° 28' E 127.41 feet along said southwesterly extension and northwesterly line of said lease parcel; thence continuing N 65° 35' 19" E 67.62 feet along the northwesterly line of said lease parcel to a point on the southwesterly extension of the southeasterly line of above described Beem parcel; thence N 43° 18' 33" W 405.52 feet to the point of beginning.

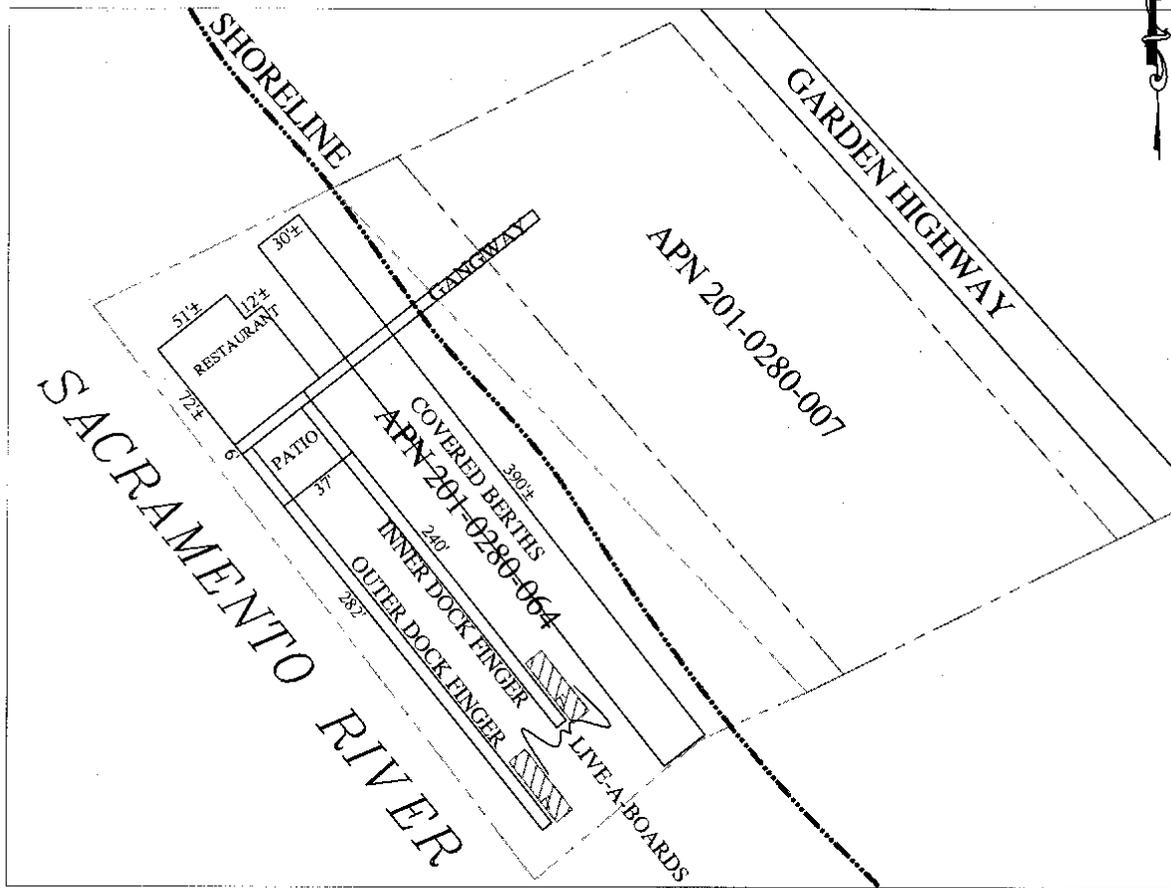
EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Sacramento River.

END OF DESCRIPTION

PREPARED AUGUST 21, 1981 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR.

NO SCALE

SITE



5999 Garden Highway

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

WP 5110.1
 ALAMAR RESTAURANT
 & MARINA L.L.C.
 APN 201-0280-007 & 064
 GENERAL LEASE-
 COMMERCIAL USE
 SACRAMENTO COUNTY



MDF 2/06/08

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.